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Company and others. From a decree for defendants, plaintiff appeals. Reversed in part, and remanded.

See, also, 70 S. E. 496; 17 Va. Law Reg. pp. 225, 226, where this case is reported on a former hearing.

Marvin Smithcy and *R. B. Davis*, for appellant.

E. R. Turnbull, Jr., and *E. P. Buford*, for appellees.

MANSON & SHELL *v.* RAWLINGS' EX'X et al.

June 8, 1911.

[71 S. E. 564.]

1. Judgment (§ 64*)—By Confession—Entry by Clerk—Statute.—Code 1904, § 3283, providing that in any suit a defendant may in vacation, whether the suit be on docket or not, confess judgment in the clerk's office, and that the same shall be entered of record by the clerk in the order or minute book, and be as valid as if entered in court on the day of such confession, and that the clerk shall enter upon the margin of such book, opposite where the decree is entered, the date when it was confessed, is merely declaratory of the common law, and a substantial compliance is sufficient; and hence a judgment by confession is valid, though the only memorandum be a note in the fee book of the clerk of the circuit court referring to the confession, a certificate by him to the clerk of the country court, and a memorandum by the clerk of the circuit court showing that execution was delivered to the sheriff, for a judgment is not invalid because there was no suit actually pending, or for the lack of a declaration, or for failure of the clerk to make an entry in the order book.

[Ed. Note.—For other cases, see Judgment, Dec. Dig. § 64* 3 Va.-W. Va. Enc. Dig. 67, 73.]

2. Limitation of Actions (§ 172*)—Effect of Bar—Joint Judgment.—Where a joint judgment returned against two defendants was barred against the estate of one, because not enforced against the personal representative of that decedent within five years, it is not barred against the estate of the other.

[Ed. Note.—For other cases, see Limitation of Actions, Dec. Dig. § 172.* 8 Va.-W. Va. Enc. Dig. 627.]

3. Principal and Surety (§ 138*)—Liability of Surety—Nature.—The liability of a surety is the same as that of the principal; the creditor being under no obligation to look to the principal before resorting to the surety.

[Ed. Note.—For other cases, see Principal and Surety, Cent. Dig. § 387; Dec. Dig. § 138.* 8 Va.-W. Va. Enc. Dig. 7.]

*For other cases see same topic and section NUMBER in Dec. & Am. Dig. Key No. Series & Rep'r Indexes.

4. Limitation of Actions (§ 167*)—Effect of Bar—Liability of Surety.—A surety is primarily liable for the debt of his principal, save that under the direct provisions of Code 1904, §§ 2890, 2891, he may require the creditor to sue, and a failure on the part of the creditor to reduce his claim to judgment will absolve the surety, but where a judgment has been recovered against both the principal and the surety the judgment must be barred against the surety to release him; for Code 1904, § 3395, provides that in an action founded on contract, though plaintiff be barred against some of the defendants, he may have judgment against any of the others against whom he would have been entitled to recover if he had sued them only, and hence a surety is not released because a joint judgment is barred as to the principal.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 651; Dec. Dig. § 167.* 13 Va.-W. Va. Enc. Dig. 59.]

Appeal from Circuit Court, Brunswick County.

Action by R. W. Manson and J. R. Shell, copartners doing business under the name of Manson & Shell, against W. P. Rawlings' executrix and others. From a judgment for defendants, plaintiffs appeal. Reversed and remanded, with directions.

E. R. Turnbull, Jr., for appellants.

R. B. Davis and E. P. Buford, for appellees.

JESSIE *v.* COMMONWEALTH.

June 13, 1911.

[71 S. E. 612.]

1. Witnesses (§ 414*)—Corroboration.—Where, on cross-examination of a witness who had identified accused as the guilty party, the defense offered the stenographic report of his testimony given before the coroner on the day after the killing, in which he was alleged to have stated that the man who killed deceased did not show his face and that the witness could not identify him, the state was entitled to introduce in corroboration declarations of the witness to the police immediately after the murder that defendant killed deceased, which statement was corroborated by four policemen.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 1287, 1288; Dec. Dig. § 414.* 13 Va.-W. Va. Enc. Dig. 972.]

2. Criminal Law (§ 823*)—Instructions—Weight of Evidence—Prejudice.—An instruction that a statement coming from any witness that the jury believe to be true is reliable testimony was not prejudicial to accused, when read in connection with other instruc-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.